



August 3, 2011

Jennifer J. Johnson, Esq.  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551

**Daniel T. Henry**  
Executive Vice President &  
Chief Financial Officer

**American Express Company**  
World Financial Center  
200 Vesey Street  
New York, NY 10285

Re: **Proposed Rule: Capital Plans**  
**Docket No. R-1425 and RIN 7100-AD 77**

Dear Ms. Johnson:

American Express Company ("American Express") appreciates the opportunity to comment on the Federal Reserve Board's (the "Board") proposed rule that would require certain bank holding companies ("BHCs") to submit annual capital plans to the Federal Reserve and provide prior notice under certain circumstances before making capital distributions. American Express respectfully requests that the proposal be modified and clarified to resolve the concerns expressed below.

**I. The Capital Plan Submission and Non-Objection Dates Should be Moved to Not Later than October 15 and February 1**

The Board's proposed approach generally would require a BHC to file its capital plan each year by January 5 and the Federal Reserve to provide the BHC an objection or notice of non-objection by March 15 of the same year. As a result, the BHC would be able to act upon its capital plan only after March 15 of each year.

If adopted, this timeline would create difficulties for BHCs that wish to distribute capital, especially to effect share repurchases, within the first quarter. Typically, the period between March 15 and 31 falls within an earnings "blackout" during which a publicly traded BHC will not be in the market to repurchase its shares because it is in possession of material, non-public information regarding its first-quarter financial results, which will not be released until the second quarter. Thus, a BHC could be effectively precluded from effecting share repurchases for all of the first quarter, absent applying for and receiving individualized approvals from the Federal Reserve for such distributions. To avoid this issue, we respectfully recommend that the submission deadline for capital plans be moved forward to October 15 of each prior year, and the non-objection deadline be moved forward to no later than February 1.



We acknowledge that Section 225.8(f) of the proposed rule would create a process by which BHCs may provide a notice to the Federal Reserve regarding individualized capital distributions while a capital plan is being reviewed. This process, however, would create duplicative and potentially cumbersome application work given the detailed requirements for the individualized notices. We would urge that the individualized notice process should be reserved for individualized circumstances, not be used as a substitute for the plan approval process for virtually the entire first quarter.

If the Board determines not to move the approval process earlier as noted above, we respectfully request that the Federal Reserve's approval of capital plans by March 15 generally cover capital distributions for the rest of the current year and the following year's first quarter, rather than essentially covering only the remainder of the current year after the plan is approved. The Board's proposal contemplates approval of capital plans annually by March 15, in which each BHC would obtain non-objection for uses of capital for the remainder of the current year. If the non-objection covered the following year's first quarter in addition to the final three quarters of the current year, BHCs would not be hindered in their ability to use capital in the first quarter of each year during the pendency of the Federal Reserve's capital plan review for the ensuing four quarters. This alternative solution, however, would not apply in time to remedy these issues for the first quarter of 2012 (unless the effective date of the rule were pushed until after that quarter). We prefer moving the approval process to the earlier timeline starting in October, as discussed above.

## **II. The Board Should Clarify that BHC Capital Plans May Incorporate Alternative Uses of Surplus Capital**

The proposed rule defines a "capital plan" in Section 225.8(c)(3)(i) to include, among other items, "an assessment of the expected uses and sources of capital." This language suggests that a capital plan may incorporate not only a BHC's intended use(s) of capital, but also the BHC's alternative uses of capital. This reading of the proposed rule is supported by the proposed rule's preamble, which states that the "proposal is designed to be flexible enough to accommodate bank holding companies of varying degrees of complexity and to adjust to changing conditions over time." Thus, for instance, a BHC capital plan that earmarks surplus capital for acquisitions may also incorporate alternative uses for the capital, such as a stock repurchase or other distribution, in the event planned acquisitions are not fully executed, and a BHC with an approved plan may pursue the alternative, as circumstances develop, and so long as the BHC maintains the capital targets approved under its capital plan.

Although we read the proposed rule's definition of a capital plan to naturally include such flexibility to incorporate alternative capital uses, given the importance of such flexibility, we request clarification to remove any doubt on this point. We therefore respectfully suggest that Section 225.8(c)(3)(i) of the proposal be



modified to read: "an assessment of the expected uses, including alternative uses, and sources of capital . . . ."

\* \* \*

Thank you for considering this letter. American Express appreciates the opportunity to share its views and would be happy to discuss them with the Federal Reserve staff at its convenience. If you have any questions please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in cursive script that reads "Daniel T. Henry".

Daniel T. Henry  
Executive Vice President, Chief Financial Officer  
American Express Company